to the father, and without his consent, and as there was undoubted evidence given of the father's consent, who might have destroyed the personal disposition, and the charter and sasine would still have been good, the charter could not justly be reduced; whereas here the objection is, that neither David the apparent-heir, nor Durie the superior, had the feudal right that was in Andrew the father, or could convey it to any third party till it was first established in David as heir to his father; and with respect to the personal disposition 1686, though David might have conveyed it to Andrew his son, yet he could not do it without some writing under his hand, and his acceptance of the charter from Durie never could have the effect of conveying to Andrew that disposition, or enable him as assignee to it, or now his sisters to resign it in the superior's hands; that the act 1693 requires the notary in his instrument of resignation to set furth the resigner's right to the procuratory, whether heir or assignee, and no notary could do so upon these implied conveyances. Two several questions were put. First, it was found that Andrew the son had no feudal or real right to the lands;—and next, that the disposition 1686 was not conveyed to him. Some of the Lords were of very different opinions in both;—particularly Drummore. He spoke against both, and voted against the first, and at last agreed to the second, in which lay my greatest difficulty. Murkle was clear for the first, but was against the last,—29th January. 12th June Adhered. The President clear. *Renit.* Drummore, Kilkerran, *et* Kames.

SERVITUDE.

No. 1. 1734, Nov. 27. GARDEN *against* THE EARL OF ABOYNE.

THE Lords found the servitude upon the woods a predial servitude, and may be constituted by a personal declarator with possession even against a singular successor; and remitted to the Ordinary to hear upon the other points, Whether Huntly, the Crown's ward vassal, could constitute a servitude so as to prejudge the Crown when the lands returned by forfeiture? 2dly, Whether immemorial possession will prefer *retro?*

No. 2. 1741, Dec. 11. BRUCE *against* COLONEL DALRYMPLE.

THE Colonel had a gathered dam for draining his coal, whereof a part, as well as of the dike that kept up the water, was on Mr Bruce's grounds, and had been so more than 40 years, only the dike was then but three feet high, and covered little of his ground; but as the caul to the dip required a greater force of water, the Colonel at different times within the 40 years, brought in water from different grounds, and raised the dike, so that it is now three ells high, and stretches much further on Bruce's ground, as the dam also covers much more of it, but I believe he does not yet lose an acre, and the ground I suppose not very valuable. Mutual declarators of immunity and servitude being pursued, the proof was now advised. There was little question that a servitude was constituted by prescription. The question was only as to the *modus*, Whether the dike